

The issues are: (1) whether appellant met his burden of proof in establishing that his emotional condition was causally related to compensable employment factors; and (2) whether the Office abused its discretion in denying his request for reconsideration.

FACTUAL HISTORY

On March 27, 2006 appellant, then a 52-year-old air maintenance and operations foreman, filed an occupational disease claim alleging that he sustained an emotional condition beginning on June 15, 2005 due to harassment, discrimination and a hostile workplace.

In an attending physician's report (Form CA-20) dated April 6, 2006, Dr. Daniel Senseng, an attending internist, stated that appellant had diabetes, hypertension, neurodermatitis and stress adjustment disorder. He noted that appellant has medical problems that were "aggravated by work stress but not caused by it." In a work capacity evaluation dated April 10, 2006, Dr. Senseng noted that appellant could work eight hours a day but that he needed a job with less stress.

On April 20, 2006 the Office asked appellant to submit additional information, including a detailed description of the employment-related incidents or conditions contributing to his emotional condition and a comprehensive medical report containing a rationalized opinion on the cause of his condition.

By letter dated May 11, 2006, Ronald J. Hughes, a supervisor, challenged appellant's claim, stating that there were no aspects of his job that could be considered stressful nor were there any actions taken by management or any supervisor to cause appellant any stress. He stated that appellant performed his duties in a minimally satisfactory manner.

By decision dated July 13, 2006, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable employment factor. Appellant did not establish any incidents of harassment by the employing establishment.

On July 26, 2006 appellant requested a hearing before an Office hearing representative that was held on October 23, 2006.

Appellant submitted an undated statement, received by the Office on November 2, 2006, in which he detailed the alleged discriminatory and retaliatory actions taken by the employing establishment. He also submitted a January 8, 1990 Equal Employment Opportunity Commission (EEOC) decision which found that the employing establishment discriminated against him based on his race (African-American) in failing to select him for a supervisory utility systems operator position. The employing establishment was ordered to retroactively promote him to the position of utility systems operator general foreman or an equivalent position effective February 16, 1986.

By decision dated December 4, 2006, an Office hearing representative affirmed the July 13, 2006 decision but modified it to find that the denial of appellant's promotion in 1986, as found to be racially motivated by a 1990 EEOC decision, established error by the employing establishment and therefore was a compensable factor. The Office found, however, that the medical evidence did not establish that his emotional condition was causally related to this employment factor.

By letters dated May 30 and November 26, 2007, appellant requested reconsideration. In a May 10, 2007 report, Dr. Esperanza Y. Salinas, a psychiatrist, provided a lengthy report of a mental status evaluation at the request of appellant for the purpose of his EEOC claim. She diagnosed an adjustment disorder, chronic with mixed anxiety and depressed mood, aggravated by work stress. Appellant claimed that his main problem was interpersonal difficulties with Mr. Hughes who publicly embarrassed him, unfairly criticized him and gave unfair performance evaluations. Dr. Salinas found that appellant's "medical problems were not caused by stress at work but may have been aggravated by work stressors."

By decision dated February 7, 2008, the Office denied modification of its December 4, 2006 decision on the grounds that the medical evidence failed to establish causal relationship between appellant's emotional condition and the compensable factor of employment.

By letter dated February 3, 2009, appellant requested reconsideration. He submitted an amended EEOC decision, dated July 7, 2008, which found merit by the EEOC in two allegations: that appellant's supervisor, Mr. Hughes, had screamed at appellant during a meeting but that it was not so severe as to create a hostile work environment and that appellant had been denied leave to pursue his EEOC claims.

By decision dated April 16, 2009, the Office denied modification of its denial of appellant's emotional condition claim. It found that there were now three compensable factors: (1) discrimination in denying him a promotion in 1986, (2) harassment on August 2, 2005 when Mr. Hughes yelled at him during a meeting; and (3) improper denial of his requests for leave. The Office found, however, that the medical evidence did not establish that appellant's emotional condition was causally related to any of these employment incidents.

Appellant requested reconsideration. He indicated that he was enclosing copies of EEOC decisions dated September 11, 2008 and June 4, 2009, but there were no copies of these documents in the case file.

On September 28, 2009 the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.² Generally, actions of the employing

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125 (1976).

establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.³

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.⁴ When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁵ As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.⁶ Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS -- ISSUE 1

Appellant alleged that his emotional condition was caused by harassment and discrimination at work. The Office found three factors of employment that could be compensable if supported by the medical evidence: (1) discrimination in denying him a promotion in 1986, (2) harassment on August 2, 2005 when Mr. Hughes yelled at him during a meeting; and (3) improper denial of his requests for leave. The Board finds that the medical evidence is insufficient to establish that his emotional condition was caused by these accepted employment factors.

In the Form CA-20, attending physician's report, Dr. Senseng diagnosed diabetes, hypertension and neurodermatitis and noted that these medical problems were "aggravated by work stress but not caused by it." He diagnosed a stress adjustment disorder but did not describe specific employment incidents that contributed to appellant's adjustment disorder or provide medical rationale explaining how his condition was caused or aggravated by his employment. Therefore, Dr. Senseng's opinion regarding causal relationship is insufficient to establish that appellant's emotional condition was causally related to the compensable factors of employment.

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ *See Charles D. Edwards*, 55 ECAB 258 (2004).

Dr. Salinas provided a very lengthy report on the results of her mental status evaluation of appellant. She diagnosed an adjustment disorder, chronic with mixed anxiety and depressed mood, aggravated by work stress. Dr. Salinas spoke generally about the factors that aggravated appellant's anxiety and depression. She noted that "[t]he stressor that [appellant] identifies as the main component to his present state is interpersonal difficulties with his direct supervisor, [Mr.] Hughes. Collateral information reviewed supports a hostile work environment under Mr. Hughes." Dr. Salinas further noted, "[appellant's] medical problems were not caused by stress at work by may have been aggravated by work stressors." She did not specifically reference any of the three compensable factors or identify them as the cause of his emotional condition. Where Dr. Salinas's report was equivocal, as she noted that his problems "may" have been aggravated by work stressors, the Board has held that reports that are speculative or equivocal in character have diminished probative value.⁹ Therefore, her report is not sufficient to establish that appellant's adjustment disorder was causally related to a compensable employment factor.

On appeal, appellant contends that the report of Dr. Salinas was deficient because she did not see copies of the 2008 EEOC decisions.¹⁰ As noted, it is his burden to provide sufficient medical evidence in support of his claim. Appellant's contention is without merit.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act¹¹ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹² The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹³

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁴ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁶ When a claimant

⁹ *L.R.*, 58 ECAB 369, 376 (2007).

¹⁰ As noted, the 2008 EEOC decisions are not of record.

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Id.* at § 8128(a).

¹³ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

¹⁴ Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.606(b)(2).

¹⁶ *Id.* at § 10.607(a).

fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁷

ANALYSIS -- ISSUE 2

Appellant did not submit any additional medical evidence in support of his request for reconsideration of the April 16, 2009 merit decision denying his emotional condition claim. His claim was denied on the grounds that the medical evidence did not establish that his emotional condition was causally related to a compensable factor of employment. Appellant needed to submit relevant and pertinent new medical evidence. Because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered or constitute relevant and pertinent new evidence not previously considered by the Office, it properly denied his request for reconsideration of the denial of his emotional condition claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that his emotional condition was causally related to a compensable employment factor.

¹⁷ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 28 and April 16, 2009 are affirmed.

Issued: August 6, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board